U.S. Small Business Administration
South Carolina District Office
1835 Assembly St., # 1425
Columbia, SC 29201

February 12, 2009

CERTIFIED MAIL RETURN RECEIPT REQUESTED

«FirmName»
«FirmStreet»
«FirmAddress»

Dear :

Proposed Joint Venture – «FirmName»/ «Mentor»
Requirement Name and Solicitation Number: SOLICITATION NO. (Insert Number).

This letter acknowledges your written notification of the above referenced proposed joint venture. 13 C.F.R. §124.513 and SBA SOP 80 05 2 govern joint venture agreements. Please find enclosed a copy of the regulations, draft copy of SOP Chapter 8, a draft SBA Procedural Notice regarding procedures for Processing 8(a) Joint Ventures, a checklist and a suggested letter format to SBA.

The SOP stipulates that a SBA BOS fully discuss joint venture requirements with the 8(a) contractor(s). Please contact me for this discussion. Please be advised an 8(a) firm may not joint venture with other than another small firm, and that the joint venture entity must be small, unless a formal SBA approved Mentor-Protégé agreement is in place.

Please note that SBA must approve all JV agreements prior to award of a contract. A contract cannot be awarded to a joint venture until the joint venture has been approved. The SBA District Office has authority to approve JV's between 8(a) contractors. SBA Headquarters, Washington DC approves all other joint venture agreements. You must allow ample time of at least one month for the approval process.

Please use the SOP and these guides to assist you in preparing your joint venture agreement approval request. Please address all of the items contained in the enclosed packet in a narrative fashion, prepare a joint venture analysis, complete the enclosed "checklist" and submit along with the JV Agreement, a copy of the solicitation and your proposal and other documentation referenced on the attached pages.

The JV should submit the following information to the Richmond SBA District Office:

a. The Joint Venture Agreement.
b. Three years of company year end financial statements or federal tax returns for each joint venturer.
c. A completed and signed company size verification form from each joint venturer.
d. An analysis of the project including anticipated cash flow, personnel, equipment and facility requirements and the responsibilities of each joint venture partner with regard to these requirements.
e. A copy of the requirement offer and acceptance.
f. A copy of the bid proposal.
g. A letter from the lead 8(a) Participant stating:

    1) How the JV is fair, equitable and beneficial to the 8(a) concern.
    2) Specifically, what the Participant lacks in capacity and/or capability that makes the joint venture necessary for project performance.
    3) What specific benefits the 8(a) firm will receive from participation in the JV.
    4) What percentage the 8(a) firm will perform on the contract (must be a significant amount)

REMEMBER YOUR FIRM HAS TO DOCUMENT THE FOLLOWING:

1) How the 8(a) firm lacks the capacity to perform (win) the contract;
2) How the 8(a) firm will benefit substantially from award of the contract;
3) How the JV is fair and equitable;
4) That the JV will perform a substantial portion (______%) of the contract;
5) That the 8(a) firm will perform a significant portion (_______%) of the JV's portion;
6) That the 8(a) concern will receive a minimum of 51 % profit of the contract.
7) Answer the questions and provide comments on the items on the enclosed page.

If you have any questions please contact the an 8(a) Business Development Specialist at (telephone) 803 253 3116, (office fax) (804) 771-2764, (direct fax) (202) 481-4636 and email: john.oneill@sba.gov.

Sincerely,

Business Opportunity Specialist
8(a) Business Development

Attachments:

Suggested letter format requesting SBA's approval
Analysis of Joint Venture (Part 1 of 2)
Analysis of Joint Venture (Part 2 of 2)
Joint Venture Checklist
SBA 8(a) Standard Program Operating Procedures (SOP) Section 8
SBA Notice Procedural No. 8000-596 (7-30-03) Guidance for Joint Ventures and Teaming Agreements
13 CFR § 124.513 – Joint Ventures
SBA Form 355 – Size Determination (http://www.sba.gov/sbaforms/sba355.pdf)
JV Supplemental Checklist – Additional required documentation from JV Partner

Firm must submit the following:

Letter to SBA Requesting Approval of Joint Venture Agreement Analysis
Joint Venture Agreement
Analysis of Joint Venture (see enclosed)
Copy of the Solicitation
Copy of the Contract Proposal
IRS Tax Returns – JV Partner – 3 years
Financial Statement – JV Partner – 3 years
Capability Statement – JV Partner
Capability Statement – 8(a) Contractor
Mentor Protégé Agreement (if applicable)

SUGGESTED FORMAT REQUESTING ADVANCE APPROVAL OF JV AGREEMENT…

Date: _____________

U.S. Small Business Administration
8(a) Business Development Program
400 N. 8th Street, Suite # 1150, PO Box 10126
Richmond, VA 23240-0126

«FirmName» hereby submits a proposed joint venture agreement for advance approval. The contracting opportunity is for a competitive 8(a) set aside from the_____________Agency under SOLICITATION NO. (To be Determined). The bid date is ____________ and the anticipated date of award is _________. We desire to create a Joint Venture with «Mentor» (JV partner name), operating as a ______ (limited liability corporation), with the name of _______________ (Joint Venture name) for the purpose of proposing, negotiating, and performing the Contract, which we hope will be awarded to us.

[Describe the history of the solicitation, if known, e.g., the _______ (agency) has consolidated eight contracts into this solicitation requirement. The agency wants to identify and implement efficiencies to reduce costs and enhance performance, etc.]

Attached for SBA's review and approval is a joint/venture operating agreement between «FirmName» and «Mentor». Also included from both companies are copies of the last three-year's financial statements and income tax returns, an analysis of the Joint Venture Agreement as required.

The two companies elected to form a Joint Venture to compete for this solicitation based on our detailed analysis of the requirement, first hand knowledge of company's capabilities, and those of our proposed subcontractors. The joint venture team consists of the following:

«FirmName» – (describe the firm's capabilities as it relates to this requirement.)

«Mentor» - (describe the firm's capabilities as it relates to this requirement.)

The subcontractors to the JV are: ____

The _______________ (name of the Joint Venture) will perform __% of the contract and our subcontractors will perform no more than ________%. «FirmName» realizes that it must perform a significant portion of the work, and will therefore perform ____________% of the joint venture and (JV partner) will perform ____________%.

«FirmName» believes the Joint Venture Agreement is fair and equitable and will result in substantial benefit to our firm. [Substantiate the six (6) items in previous page and add any other information that would assist SBA in approving your request, i.e., benefit to the 8a firm, etc.]
[END OF SUGGESTED LETTER]

Analysis of Joint Venture (Part 1 of 2)

The firm must prepare an analysis of Joint Venture, which contains:

a. Description of the JV to include:
   1) Name of Firms
   2) Description of Participating Firms
   3) Ownership of Firms (Disadvantaged/non-disadvantaged)

b. Description of Project
   1) Customer Agency
   2) Size of Project
   3) Type of Project (General Construction, Janitorial, etc.)
   4) The expected award date for the project

c. The specific resources or abilities that the Participant lacks that make performance of a JV necessary.
d. The purpose of the JV and specific benefits to be gained by the 8(a) Participant firm. (How will this affect future capabilities of the firm?)
e. Effect the JV and the instant requirement on performance under existing contracts in terms of cash flow, personnel, equipment and facilities.
f. Analysis of the JV including:
   1) Description of Project (Size, Duration, Requirements for Performance).
   2) Who are the JV partners?
   3) Ownership/Control
   4) Affiliates/Subsidiaries
   5) Industry/Capabilities/History
   6) Size Study (A Size Study will be performed whenever a non-Participant is involved.)
   7) Financial capability and capacity to implement the JV
g. For the 8(a) Participants:
   1) Background
   2) Stage of 8(a) Participation
   3) Number of contracts in this SIC Code
   4) Business Activity Targets
   5) Previous Joint Ventures (if any)
   6) How the performance of this project will affect performance on other contracts
   7) Relevant experience and professional licenses, etc.
h. For the non-8(a) members
   1) Background
   2) Number and value of contracts in this SIC code
   3) Relevant experience and professional licenses, etc.
   4) Previous joint ventures with 8(a) firms and names

i. Ownership of JV
    1) Statement of percentage of ownership by Disadvantaged owners.
j. Size
    1) Partners individually and all of their affiliates.
    2) Of the JV as an organization.
    3) Copy of the size study.
k. Financial
    1) What is necessary for the project (estimated cash flow including maximum initial financial outlay requirements and general project operating cash flows).
    2) What each partner is contributing.
    3) Financial controls cited in the JV agreement.
l. Employees
    1) What employees are needed to perform the project (by position type and number in each category)?
    2) Number and skills of employees supplied to the joint venture by each joint venturer.
    3) Brief description of hiring and employee management responsibilities of each JV partner.
m. Project Management and Administration
    1) How will project management be handled? (Remember that the lead 8(a) firm must maintain project management control.)
    2) Brief description of contract administration responsibilities and responsibilities of each partner.
    3) Breakdown of work or tasks to be performed by each joint venturer.
n. Equipment
    1) What is needed for the project?
    2) What will each JV partner provide?
    3) What is the value of the equipment supplied by each member of the JV?
    4) Who will hold ownership to jointly purchased equipment (if any) at conclusion of project?
o. A conclusion whether all the required provisions have been incorporated and that the provisions of the JV agreement are fair and equitable and for the substantial benefit of the 8(a) Participant.
p. A conclusion whether the 8(a) Participant brings something of value to the JV in terms of resources and expertise other than its 8(a) status. Profit, alone, is not an acceptable reason for a JV.
q. A statement that 13 CFR 124.513 has been provided to the 8(a) Participant by certified mail, return receipt requested.
r. Summary of the JV analysis, with recommendation.
a. A statement that all required provisions have been incorporated into the JVA and that they have been fully discussed with the 8(a) Participant.
b. A statement that all provisions of the JV Agreement are fair and equitable and for the substantial benefit of the Participant.
c. A statement that 13 CFR 124.513 has been provided to the Participant by certified mail, return receipt requested.
d. A copy of the requirement offer and acceptance (SBA will obtain).

e. A copy of the requirement acceptance (SBA will obtain). [End of Analysis]

DATE: ___________________________

SUBJECT: Joint Venture Agreement Analysis (Part 2 of 2)

TIME IS OF ESSENSE: BID DATE: ANTICIPATED AWARD DATE:

8(a) Firm:	«FirmName» Address: «FirmStreet» «MentorAddress» President: Phone:
SBA Case No.	106046
JV Partner Firm Name:	«Mentor» «MentorStreet» «MentorAddress» President: Phone:
SBA Case No. (if applicable)	
Joint Venture Name:	__________________________________
Project Name:	
SOLICITATION NO.	
Bid Date:	
Anticipated Award Date:	

Narrative:

«FirmName», requests approval of the enclosed Joint Venture Agreement.
The name of the Joint Venture is ___________.
The Requirement name is ______.
The 8(a) contractor received its 8(a) certification on _________.
The firm's Fixed Program Participation Term (FPPT) Expiration Date: «FFPT».
The firm has received _________8a contracts in the amount of $________ to date.
The proposed Joint Venture Partner is _______(JV Partner name), who brings substantial financial, managerial, and technical strength to the proposed JV, and successfully performed on ___________ 8(a) contracts totaling $________ , if applicable.

Solicitation History:

(Describe the solicitation)

Narrative:

13 CFR § 124.513 (a) (2) stipulates that a Joint Venture Agreement is admissible where an 8(a) concern:

a) lacks the necessary capacity to perform the contract on its own.

   Comments:

   1) (comment on 8a firm sales, 8a contract awards etc. – to present a case where the firm lacks the capacity to perform due its size)

   2) (describe how the 8a firm lacks the financial, technical and managerial capacity the agency would deem necessary to qualify the firm's competitive bid, applicable.)

b) be of substantial benefit to the 8(a) firm. Clearly, ________________ would benefit greatly from the JVA in that it will:

   1) Substantial benefit # 1 ____

   2) Substantial benefit # 3 ____

   3) Substantial benefit # 4 ____

   4) Be able to participate in, and profit from, and manage and control, the one of the largest contracts of the firm's history;

Substantial benefit narrative: ____
____

The information provided herein, including checklist below, and enclosed supporting documentation support the recommendation for approval of the proposed Joint Venture Agreement.

Checklist: Joint Venture Agreement References - Requirements of 13 CFR 124.513

Significant CFR Requirements	**Yes or No**
Are JV partners individually small and the JV entity small? (If no mentor-protégé agreement) Comments: Combined three-year average sales are $_______. Size threshold for NAICS Code _______ - $___ million	
Does the 8(a) concern lack capacity? See narrative above.	
Is agreement fair to the 8(a) contractor? See narrative above.	
Does the agreement provide substantial benefit to 8(a) contractor: See narrative.	
Will the 8(a) contractor perform a significant portion of the contract? See narrative above. 8a firm ______ will perform ___% of the JV portion of ___%.	

Checklist - Contents of Agreement

Every JV agreement to perform an 8(a) contract, including those between mentors and protégés authorized by §124.520, must contain a provisions of **13 CFR §124.513 (c) *Contents of a Joint Venture***:

(1)

Paragraph # __ , Page # __	§124.513(c) (1) ***Purpose.*** Setting forth the purpose of the JV;

(2)

Paragraph # __ , Page # __	§ 124.513 (c) (2) Designating the 8(a) Participant as the managing venturer of the JV and;

(2a)

Paragraph # __ , Page # __	§124.513 (c) (2) Designating an employee of the 8(a) as project manager;

(3)

Paragraph # __ , Page # __	§124.513 (c) (3) Stating that not less than 51 percent of the net profits earned by the JV shall be distributed to the 8(a) concern;

(4)

Paragraph # __ , Page # __	§124.513 (c) (4) Providing for the establishment and administration of a special bank account in the name of the JV;

(4a)

Paragraph # __ , Page # __	§124.513 (c) (4)The special bank account shall require the signature of all Participants to the JV;

(4b)

Paragraph # __ , Page # __	§124.513 (c) (4) All payments due the JV for the performance on the 8(a) Contract shall be deposited in the special account; all expenses incurred under the contract will be paid from this account as well;

(5)

Paragraph # __ , Page # __	§124.513 (c) (5) An itemized description of all major equipment, facilities, and other resources to be furnished by each participant to the JV, which detailed schedule of cost or value of each;

(6)

Paragraph # __ , Page # __	§124.513 (c) (6) A provision specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract and any subcontracts to the JV;

(7)

Paragraph # __ , Page # __	§124.513 (c) (7) Obligating all parties to the joint venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member;

(8)

Paragraph # __ , Page # __	§124.513 (c) (8) Designating the accounting and other administrative records relating to the joint venture be kept in the office of the 8(a), unless approval to keep them elsewhere is granted by the DD upon written request;

(9)

Paragraph # __ , Page # __	§124.513 (c) (9) Requiring the final original records be retained by the 8(a) upon completion of the 8(a) contract performed by the JV

(10)

Paragraph # __ , Page # __	§124.513 (c) (10) Stating that quarterly financial statements showing ;cumulative contract receipts and expenditures (including salaries of the JV's principals) must be submitted to SBA NLT 45 days after each operating quarter of the JV and;

(11)

Paragraph # __ , Page # __	§124.513 (c) (11) Stating the a project-end profit and loss statement, including a statement of final profit distribution must be submitted to SBA NLT 90 days after completion of the contract.

(d) Performance of work

Paragraph # __ , Page # __	§124.513 (d) ***Performance of work.*** For any 8(a) contract, including those between mentors and protégé authorized by §124.50, the JV must perform the applicable percentage of work required by §124.510, and the 8(a) partner(s) to the JV must perform a **significant portion** of the contract.

(e)

Paragraph # __ , Page # __	§124.513 (e) ***Prior approval by SBA.*** SBA must approve a JV agreement prior to the award of the contract;

(g)

Paragraph # __ , Page # __	§124.513 (g) ***Amendments to the joint venture agreement.*** SBA must approve all amendments to the JV agreement.

(h)

Paragraph # __ , Page # __	§124.513 (h) ***Inspection of records.*** SBA may inspect the records of the JV without notice at any time deemed necessary.

See “Calculation Page” below	Size standard data for each participant; Joint size standard verification signed by ADD/8(a) BD.
See attached Exhibit 5.	“Certified mail, return receipt requested” letter verifying that a copy of 13 C.F.R. §124.513 and SBA SOP dealing with Joint Venture Agreements were mailed to the contractors that are parties to the JV; and that the BOS has fully discussed the JV requirements with each contractor.

Further the following information is provided:

CFR Reference:	Yes or No
13 CFR 124.513 (a) (2): The 8(a) concern lacks the necessary capacity to perform the contract on its own, and	
The agreement is fair and equitable, and	
And will be of substantial benefit to the 8(a) concern.	
13 CFR 124.513 (a) (2) (b): …each concern is small under the size standard corresponding to the SIC (NAICS) assigned to the contract, provided;	
124.513(a)(2)(b)(i): The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the SIC (NAICS) assigned to the contract; and	
124.513 (a) (2) (b) (ii) (A): For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract: or	

124.513 (a) (2) (b) (ii) (B): For a procurement having an employee-based size standard, the procurement exceeds $10 million;	Yes or No
124.513 (a) (2) (b) (ii) (B) (2): For sole source and competitive 8(a) procurement that do not exceed the dollar levels identified in paragraph (b) (1) of this section, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC (NAICS) code assigned to the 8(a) contract.	
124.513 (a) (2) (b) (ii) (B) (3): Is the joint venture between a protégé and its approved mentor?	

Summary:

Based on the information contained information, and personal interviews with principals of both firms, the content and analysis of the Joint Venture and supporting documentation, it is concluded that the need exists for a joint venture to assist the 8(a) firm, and that the:

8) 8(a) firm lacks the capacity to perform (win) the contract;
9) 8(a) firm will benefit substantially from award of the contract;
10) JV is fair and equitable;
11) JV will perform a substantial portion (___%) of the contract;
12) 8(a) firm will perform a significant portion (___%) of the JV's portion;
13) 8(a) concern will receive 51 % profit of the contract.

Attachments:

Joint Venture Agreement
Copy of the Solicitation
Copy of the Contract Proposal
IRS Tax Returns – JV Partner – 3 yrs.
Financial Statement – JV Partner – 2 years
Capability Statement – JV Partner
SACS Printouts – 8a Firm
Financial Analysis of 8(a) firm
Three-year average sales and contract summary of the 8(a) firm
SBA Form 355 – Application for Small Size Determination

8(a) Firm: <u>«FirmName»</u>

Annual Sales 2008	$
Annual Sales 2007	$
Annual Sales 2006	$
Total Annual Sales	$
3 Yr. Average Annual Sales (SACS)	$

Joint Venture Partner: (JV Partner name) from: SBA Form 355 – Application for Small Size Determination

Annual Sales 2008	$
Annual Sales 2007	$
Annual Sales 2006	$
Total Annual Sales	$
3 Year Average Annual Sales (IRS Returns)	$

<u>Combined Annual Sales: 8(a) Firm and Joint Venture Partner</u>

Annual Sales 2008	$
Annual Sales 2007	$
Annual Sales 2006	$
Total Annual Sales	$
3 Year Average Annual Sales	$

Contract summary of the 8(a) firm

8(a) contract awards to date: ____contracts in the amount of $ ____

SBA Procedural Notice

TO:	Regional Administrators, District Directors and District Counsels	**CONTROL NO.:**	8000-596
SUBJECT:	Guidance for Joint Ventures and Teaming Agreements	**EFFECTIVE:**	7-30-2003

Note to District Directors: Please distribute this notice to Business Development staff.

Purpose: The purpose of this notice is to provide guidance on processing Joint Ventures and teaming agreements for 8(a) firms and to clarify the level of authority required for approval of Joint Venture Agreements (JVA). The procedures for processing JVA's closely follow the language and format that will be used in the upcoming standard operating procedures for the 8(a) Business Development program.

Clarification of Approval Authority: In accordance with 13 C.F.R. 124.513, the SBA may approve an 8(a) contract award to a Joint Venture formed under an SBA-approved JVA between one or more other small business concerns, or its approved large business mentor, for the purpose of performing a specific 8(a) contract.

Past practice has been that only the Associate Administrator for the 8(a) Business Development (8(a) BD) program was authorized to approve JVA's. However, in keeping with the President's Management Agenda to improve employee performance and become more customer oriented, the 8(a) program is reducing the number of managers that must review JVAs to an optimum level. After extensive review of our Joint Venture approval processes, we concluded that we could provide quicker and better responses to our firms and the procurement activities, and provide a closer decision point of contact to the customer, by lowering the level of authority required for approval of JVAs.

Accordingly, effective on the date of this notice, the district director or deputy district director (or the person acting on behalf of the district director in the DD's absence) is now authorized approve JVAs for firms serviced by his/her office, in accordance with the procedures set forth in this notice. This authority is not delegable. This notice does not modify any existing regulatory provisions.

Throughout this document, there are references to the ADD/8(a) BD. For those district offices with no ADD/8(a) BD, please substitute "the most senior person in the 8(a) BD division."

Luz Hopewell
Associate Administrator
Business Development

Expires: 7/1/2004

Procedures for Processing Joint Ventures and Teaming Arrangements

1. **What is a Joint Venture Agreement?**

   a. A Joint Venture Agreement (JVA) is an agreement between an eligible 8(a) Participant and one or more other business concerns to establish a new legal entity solely for the purpose of performing a specific 8(a) contract. The contract is then awarded to the Joint Venture entity rather than to one or more of the Participants.

2. **When are Joint Ventures permitted?**

   a. Joint Ventures are permitted only when:

      (1) The 8(a) Participant lacks the capacity to perform the contract on its own;

      (2) The Joint Venture arrangement is fair and equitable;

      (3) The Joint Venture will be of substantial benefit to the 8(a) Participant; and

      (4) The 8(a) Participant brings substantial resources and/or expertise to the Joint Venture.

3. **What does capacity mean?**

   a. "Capacity" means the overall ability of a business concern to meet the quality, quantity and time requirements of the contract. Generally, capacity is the firm's ability to provide adequate and appropriate management, labor, equipment, plant, bonding and financial resources to successfully complete the contract.

   b. Some of the areas of capacity include:

      (1) Adequate bonding (if necessary);

      (2) Adequate financing;

      (3) Technical expertise;

      (4) Experience with similar requirements;

      (5) Access to specialized/required equipment; and

      (6) Access to appropriate facilities.

4. **What role must the 8(a) Participant have in the Joint Venture?**

a. An 8(a) Participant must be designated as the managing (or lead) Venturer, and an employee of the managing Venturer must serve as the project manager responsible for performance of the 8(a) contract.

5. **How does SBA determine if the Joint Venture is small?**

a. Except in the case of Joint Ventures under SBA's Mentor/Protégé program, for all sole source requirements and for competitive 8(a) procurements that are equal to or less than one half the size standard of the North American Industry Classification System (NAICS) code assigned to the requirement or are $10 million or less for employee-based size standards:

(1) The 8(a) concern is considered to be affiliated for size purposes with the other concern(s); and

(2) The combined annual receipts or number of employees of all concerns in the Joint Venture must not exceed the size standard for the NAICS code assigned to the 8(a) procurement.

b. For an 8(a) competitive procurement that exceeds half the size standard of the assigned revenue-based NAICS code, or $10 million for an employee-based NAICS code, a Joint Venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contact. See 13 CFR 124.513(b). See also 13 CFR 124.513(b)(3) and question 6 of this notice for special size rules for Joint Ventures between Mentors and Protégés under SBA's Mentor/Protégé program.

6. **How does SBA determine if the Joint Venture is small under the Mentor Protégé Program?**

a. A Joint Venture between a Protégé 8(a) firm and its approved Mentor will be deemed small provided that the Protégé is small under the size standard for the NAICS code assigned to the procurement and otherwise meets relevant eligibility requirements. See 13 CFR 124.513(b)(3). This means that under the Mentor/Protégé program, the size of the Mentor and the combined size of its approved Protégé may exceed the size standard applicable to the project for either sole source or competitive projects, as long as its Protégé is small under the size standard for the NAICS code assigned to the procurement.

7. **What office must a Participant notify if it intends to enter into a Joint Venture Agreement and what information will be provided to the Participant?**

a. An 8(a) Participant must notify and request approval from the servicing District Office for any contemplated agreements, arrangements or understandings, regardless of type, that may in any way give an interest to any person, other than those upon whom eligibility is based, in the operation, management or control of the 8(a) concern. This includes JVAs.

b. The District Office must provide the Participant and any other parties to the Agreement notice of all provisions required by SBA in the Joint Venture Agreement and all restrictions imposed by SBA on such agreements.

8. What are the general requirements for submitting and obtaining SBA approval of Joint Venture Agreements?

a. The Joint Venture applicants must submit all required information to the managing 8(a) Participant's servicing District Office as soon as possible, but no less than 20 working days prior to the scheduled date for contract award. Incomplete packages will be returned to the Participant without action. The managing Participant is the managing partner or lead Venturer.

b. The JVA must be approved by SBA prior to the award of an 8(a) contract to the Joint Venture.

c. Failure to obtain SBA approval of the JVA prior to award of the contract will result in SBA's request that the buying activity terminate the award to the Joint Venture.

d. SBA must approve in advance all proposed amendments, modifications, or extensions to a JVA.

9. What documentation must be submitted by the Joint Venture applicants to the District Office for approval of a Joint Venture?

a. The managing 8(a) Participant in the Joint Venture must submit the following information to its servicing District Office:

(1) The Joint Venture Agreement (the agreement must meet all the requirements set forth in 13 CFR 124.513(c) and Question 10 of this notice); and

(2) Three years of signed company year end financial statements and Federal tax returns for each participant.

b. A letter from the managing 8(a) Participant stating:

(1) What the 8(a) Participant or Participants lack in capacity and/or capability which makes the Joint Venture necessary for project performance;

(2) What specific benefits the 8(a) firm will receive from participation in the Joint Venture (in addition to contract revenue) and how these benefits will affect the 8(a) firm;

(3) What resources the 8(a) Participant(s) will bring to the Joint Venture; and

(4) The supplemental information listed in Question 11 of this notice.

10. What must be in the Joint Venture Agreement?

a. Every JVA to perform an 8(a) contract, including those between Mentors and Protégés, must contain a provision:

(1) Setting forth the purpose of the Joint Venture;

(2) Designating an 8(a) Participant as the managing Venturer of the Joint Venture, and an employee of the managing Venturer as the project manager responsible for performance of the 8(a) contract;

(3) Stating that not less than 51 percent of the net profits earned by the Joint Venture will be distributed to the 8(a) Participant(s);

(4) Providing for the establishment and administration of a special bank account in the name of the Joint Venture. This account must require the signature of all parties to the Joint Venture or designees for withdrawal purposes. All payments due the Joint Venture for performance on an 8(a) contract will be deposited in the special account, and all expenses incurred under the contract will be paid from the account;

(5) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the Joint Venture, with a detailed schedule of cost or value of each;

(6) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiations of the 8(a) contract;

(7) Obligating all parties to the Joint Venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member;

(8) Designating that accounting and other administrative records relating to the Joint Venture be kept in the office of the managing Venturer, unless approval to keep them elsewhere is granted by the District Director or his or her designee upon written request;

(9) Requiring that the final original records be retained by the managing Venturer upon completion of the 8(a) contract performed by the Joint Venture;

(10) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the Joint Venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the Joint Venture; and

(11) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA not later than 90 days after completion of the contract.

11. What supplemental information must be submitted by the Joint Venture applicants to the District Office?

a. Along with the JVA, the Joint Venture applicants must submit the following general identifying information:

(1) The name of the Joint Venture (the new entity);

(2) The EIN of the Joint Venture;

(3) The DUNS number of the Joint Venture;

(4) The names of the firms participating in the Joint Venture;

b. For each firm involved in the Joint Venture, submit:

(1) The primary industry of the firm;

(2) The current capabilities of the firm;

(3) A brief description of the history of the firm;

(4) SBA Form 355 (Application for Small Business Size Determination); and

(5) SBA Form 1623 (Certification Regarding Debarment, Suspension and other Responsibility Matters).

c. The Joint Venture applicants must submit a description of the project that includes:

(1) Customer Agency;

(2) Size and dollar value of project;

(3) Type of project (general construction, janitorial, etc.);

(4) Expected award date for the project;

(5) Duration of project and requirements for performance;

(6) Copy of the requirement’s offer and acceptance letters; and

(7) Draft or final copy of bid proposal or offer;

(8) An analysis (prepared by the Joint Venture participants) of the project that describes the anticipated cash flow, personnel, equipment and facility requirements;

(9) A copy of the Statement of Work; and

(10) The procurement's FedBizOpps synopsis.

d. For non-8(a) Participants, the Joint Venture applicants must submit:

(1) The number and value of contracts in the same NAICS code as that assigned to the procurement; and

(2) Relevant experience and professional licenses, etc.; and

(3) Details of all previous Joint Ventures with 8(a) firms, including the names of all participants in those JVAs.

e. Each 8(a) Joint Venture participant must indicate the effect the JVA and the contract award will have on their performance of existing contracts in terms of the following:

(1) Cash flow;

(2) Personnel;

(3) Equipment; and

(4) Facilities.

f. The Joint Venture applicants must outline the distribution of profits for the Joint Venture and must demonstrate that the combined 8(a) Participants will receive at least 51 % percent of the profits earned by the Joint Venture.

g. The Joint Venture applicants must demonstrate that the Joint Venture meets the relevant size requirements, and must analyze the percentages of work to be performed by each firm and each subcontractor. See 13 CFR 124.510, 124.513(d); 125.6.

h. The Joint Venture applicants must submit the following financial information and certifications:

(1) Documentation indicating the establishment and administration of a special bank account in the name of the Joint Venture. See Question 10;

(2) Amount and percentage of capital that each Venturer is contributing;

(3) Three years of signed company yearend financial statements and Federal tax returns for each Participant; and

(4) Where appropriate, evidence that the Joint Venture has sufficient bonding.

i. The Joint Venture applicants must submit the following employee information:

(1) A list of the employees needed to perform the project (by position, type and number in each category);

(2) The number and skills of employees supplied to the Joint Venture by each Venturer; and

(3) A brief description of the hiring and employee management responsibilities of each Venturer.

j. The Joint Venture applicants must submit the following concerning project management and administration:

(1) An explanation of how project management will be handled (the managing 8(a) Participant must maintain project management control);

(2) An explanation of the specific responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract; and

(3) A breakdown of work tasks to be performed by each Joint Venturer.

k. The Joint Venture applicants must also submit:

(1) A statement certifying that all the required provisions have been incorporated into the JVA, as set forth in 13 CFR 124.513(c);

(2) A statement certifying that the provisions of the JVA are fair and equitable and will substantially benefit the 8(a) Participant along with an explanation demonstrating this; and

(3) A statement certifying that the 8(a) Participant(s) will bring substantial value to the Joint Venture in terms of resources and expertise other than 8(a) status.

12. What is the SBA review process for a Joint Venture?

a. The Business Opportunity Specialist (BOS) in the District Office servicing the managing 8(a) Participant has the following responsibilities:

(1) Initial review of the entire package for completeness and of the JVA to ensure that all required provisions are included;

(2) Review of the participant firms to ensure compliance with size standard requirements;

(3) Review of the package to determine whether the Joint Venture is fair and whether it will substantially benefit the 8(a) Participants(s);

(4) Review of the package to determine whether the 8(a) Participant brings something of value to the Joint Venture in terms of resources and expertise other than its 8(a) status;

(5) Preparation of a summary report of findings;

(6) Submission of the summary report and relevant supporting documents to the District Counsel for review for legal sufficiency; and

(7) Submission of the report to the Assistant District Director for 8(a)BD (ADD/8(a)BD) for review and recommendation.

b. The District Counsel is responsible for reviewing the summary report, Joint Venture Agreement and supporting information for legal sufficiency.

c. The ADD/8(a)BD is responsible for reviewing the summary report, JVA and supporting documents, and makes a recommendation to the District Director.

d. The District Director or Deputy District Director is responsible for reviewing the summary report, JVA and supporting documents, and makes a final decision whether or not to approve the Joint Venture.

e. The District Office is responsible for notifying the participant and other interested parties of the decision to approve or deny the Joint Venture.

13. What items of analysis should the BOS include in the summary report?

a. In assessing the appropriateness of the Joint Venture, the BOS should consider factors including, but not limited to, the following:

(1) The purpose of the Joint Venture and specific benefits to be gained by the 8(a) firm;

(2) The size of the Joint Venture participants, and/or the Joint Venture;

(3) The finances of each participant, and financing of the Joint Venture, including cash flow;

(4) Affiliations of each participant;

(5) Percentage of disadvantaged ownership;

(6) Number of and skills of employees supplied to the Joint Venture by each Venturer;

(7) Type and value of equipment contributed by each Venturer;

(8) Number and value of contracts received by each participant in the NAICS code assigned to the requirement;

(9) Relevant expertise or professional licenses, etc. of each Venturer;

(10) The 8(a) Participant's compliance with business activity targets;

(11) Each participant's history of Joint Ventures;

(12) The breakdown of work or tasks to be performed by each Participant; and

(13) The impact of the Joint Venture requirement on performance of the 8(a) Participant's existing contracts in terms of cash flow, personnel, equipment, and facilities.

14. What must the District Office summary report address?

a. The District Office review should be based on consideration of the factors outlined in question 13 above, and the summary report must address the following issues at a minimum:

(1) The specific resources that the participant lacks which cause the Joint Venture to be necessary. <u>See</u> Question 3 of this notice pertaining to capacity. In determining whether the 8(a) Participant lacks sufficient capacity, the scope of prior contracts and past performance should be considered.

(2) Whether all required provisions specified in 13 CFR 124.513(c) have been incorporated into the JVA.

(3) Whether all the provisions of the Joint Venture are fair and equitable and for the substantial benefit of the Participant. In order to determine whether the firm will substantially benefit from the Joint Venture, the BOS may consider, among other things, dollars earned on the project, and the likelihood that as a result of the Joint Venture the firm will improve capabilities, increase experience, acquire new equipment, acquire additional employees, be capable of handling larger procurements, obtain expertise in a new area, or acquire new skills.

(4) The specific resources the 8(a) Participant brings to the Joint Venture. In determining whether the 8(a) Participant will bring substantial resources to the Joint Venture, the BOS should consider the equipment, personnel, expertise, bonding, financing, management capabilities, and facilities the 8(a) Participant

will contribute. For managing Venturers, the BOS may also examine the expertise brought to the Joint Venture by the project manager. "Substantial" is not specifically defined, but is dependent on the nature of the procurement and the particular resources the 8(a) Participant brings. However, if the 8(a) Participant contributes far less than would warrant its receipt of 51 percent of the net profits of the Joint Venture, the presumption is created that the 8(a) Participant is not contributing substantial enough resources to the Joint Venture.

(5) Whether copies of 13 CFR 124.513 and this notice have been provided to the participants and discussed with the Participants.

15. Who in the SBA makes the final decision for Joint Venture Agreements when more than one District Office is involved?

a. Joint Venture Agreements involving program Participants having different servicing District Offices must be approved by the District Director of the servicing office of the managing 8(a) firm. Agreements will be forwarded from the ADD/8(a)BD of the District Office servicing the managing 8(a) firm (after comment) to the servicing offices of the secondary 8(a) Participant firms. Those offices will be allowed 3 working days to append comments and recommendations. The agreement package will then be returned to the managing Participant's servicing District Office for final decision by the District Director.

16. How much of the work under a requirement must the Joint Venture perform?

a. In order to be awarded an 8(a) contract, the Joint Venture must perform at least the following percentages of work:

(1) Services (non-construction). 50% of the cost of the contract incurred for personnel with its own employees;

(2) Supplies or Products. 50% of the cost of manufacturing the supplies or products (not including the cost of materials);

(3) General construction. 15% of the cost of the contract with its own employees (not including the cost of materials); and

(4) Special trade construction. 25 % of the cost of the contract with its own employees (not including the cost of materials). <u>See</u> 13 CFR 124.510, 13 CFR 125.6.

17. How much of the work of the Joint Venture must the 8(a) Participant(s) perform?

a. The 8(a) Participant(s) of the Joint Venture must perform a significant portion of the contract. Significance must be determined on a case-by-case basis, factoring considerations such as:

(1) The nature of the industry of the procurement;

(2) The level of resources dedicated by the Participant(s) (including man-hours, equipment, bonding, etc.); and

(3) The ultimate business development benefits that the Participant(s) will receive from their performance on the contract.

18. How does the SBA review Joint Ventures after approval?

a. The BOS for the managing participant will perform a review of financial information submitted quarterly and annually by the approved Joint Venture.

b. All Joint Ventures must be reviewed annually by the servicing District Office of the managing 8(a) Participant. This review takes place as part of the managing Participant's annual review. The review will commence with the Participant's first annual review after the Joint Venture has been in effect and will result in a report containing the following information:

(1) Whether the Joint Venture participants are complying with prime contractor performance requirements (See 13 CFR 125.6);

(2) Whether financial records are being recorded and kept as required;

(3) Whether the personnel of each Joint Venture participant are performing work as stipulated in the agreement and proposal;

(4) Whether equipment is used and accounted for as stipulated;

(5) Whether SBA has approved all amendments to the JVA; and

(6) Whether the 8(a) Participant(s) are receiving substantial benefit from the Joint Venture.

c. If there is more than one 8(a) Participant in the Joint Venture, the BOS for each non-managing Participant must examine the Joint Venture to determine whether the participant from that District Office is receiving substantial benefit from the Joint Venture and whether the Participant is contributing substantial resources to the Joint Venture. The reviews for non-managing Joint Venture participants also take place during such Participant's annual review.

d. SBA may inspect the records of the Joint Venture at any time, with or without notice.

e. A copy of the report described under item b, above, will be provided to the District Offices servicing the other Participants, if any.

19. What are the special considerations for contract award and execution?

a. Contract documents must list the name of the Joint Venture as the contractor. Signature approval of the contract is done with the following signatures unless awarded pursuant to a delegation of contract authority:

   (1) SBA;

   (2) Contracting Activity;

   (3) Managing Venturer (8(a) firm); and

   (4) All of the Joint Venture partners.

b. The client case number used in the SAC S/MEDCOR system will be the managing Participant's case number with added characters, in accordance with SACS/MEDCOR instructions. The BOS must immediately enter the Joint Venture's name, EIN and DUNS number, and the agency's prime contract number into all relevant databases.

20. Can the Joint Venture Agreement be amended?

a. The Joint Venture may be amended with advance approval from SBA. The members of the Joint Venture must submit the amendment(s) and justification(s) to the District Office servicing the managing participant for approval. The approval process is the same as for the original agreement (review and recommendation by BOS and ADD/8(a) BD, legal clearance from District Counsel, and the final decision by District Director).

21. What actions must be accomplished after project completion?

a. After project completion, a final close-out meeting should be held with the Joint Venture Participants to discuss the value of the Joint Venture with regard to increases in the firm's capacity and capability, whether the goals set forth at the inception of the Joint Venture were actually achieved and if not, why not; and any other concerns arising from the Joint Venture.

b. Immediately after project completion, the BOS must enter the Joint Venture's name, EIN and DUNS numbers, and the agency's prime contract number into all relevant databases.

22. What is a teaming arrangement?

a. A teaming arrangement may be an arrangement in which a potential prime contractor agrees with one or more companies to have them act as its subcontractors under a specified Government contract or acquisition program or it may be a JVA. See FAR 9.601 and 9.602, 48 CFR 9.601 and 9.602.

23. What is the role of teaming arrangements in the 8(a)BD Program?

a. A teaming arrangement may be a desirable business development tool. However, it may affect a Participant's eligibility if it results in circumstances of actual or negative control, affiliation, or loss of small business status. Consequently, a proposed teaming agreement must be carefully evaluated to determine the relationship of the parties.

24. How is a teaming arrangement treated in the 8(a)BD Program?

a. Joint Venture. Any teaming arrangement that creates a Joint Venture will be treated as a Joint Venture and will be subject to the requirements and limitations of all JVAs.

b. Subcontract. Any teaming arrangement that creates a subcontractor relationship between the Participant and one or more other concerns will be administered by the contracting activity.

Please refer any questions on this notice to Jim Parker at (202) 205-3644.

Luz Hopewell
Associate Administrator
Business Development

8(a) Joint Venture - Supplemental Checklist

For ***LLC*** JV:

1. Articles of Organization (with amendments);
2. Certificate of Fact (or existence);
3. Operating Agreement (if no operating agreement; a statement signed by JV parties "The _____________,LLC does not have an operational agreement other than the Joint Venture Agreement" or "____________, LLC's operating agreement is the Joint Venture Agreement."

For ***Corporate*** JV applicants it would be:

1. Articles of Incorporation (with amendments) + bylaws;
2. Certificate of Good Standing
3. Stock ledger + copies of certificates
4. Copies of board of director minutes authorizing the JV partner to specifically enter a JV agreement with 8a firm.

For ***Partnership*** Agreement

1. Partnership Agreement, if existing.

13 CFR Sec. **124**.513 under what circumstances can a **joint venture** be awarded an 8(a) contract?

(a) General. (1) If approved by SBA, a Participant may enter into a joint venture agreement with one or more other small business concerns, whether or not 8(a) Participants, for the purpose of performing a specific 8(a) contract. [[Page 324]] (2) A joint venture agreement is permissible only where an 8(a) concern lacks the necessary capacity to perform the contract on its own, and the agreement is fair and equitable and will be of substantial benefit to the 8(a) concern. However, where SBA concludes that an 8(a) concern brings very little to the joint venture relationship in terms of resources and expertise other than its 8(a) status, SBA will not approve the joint venture arrangement. (b) Size of concerns to an 8(a) joint venture. (1) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided: (i) The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the SIC code assigned to the contract; and (ii)(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract; or (B) For a procurement having an employee-based size standard, the procurement exceeds $10 million; (2) For sole source and competitive 8(a) procurements that do not exceed the dollar levels identified in paragraph (b)(1) of this section, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC code assigned to the 8(a) contract. **(3) Notwithstanding the provisions of paragraphs (b) (1) and (b) (2) of this section, a joint venture between a protégé firm and its approved mentor (see Sec.** 124**.520) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the SIC code assigned to the procurement and has not reached the dollar limit set forth in Sec.** 124**.519.** (c) Contents of joint venture agreement. Every joint venture agreement to perform an 8(a) contract, including those between mentors and protégés authorized by Sec. **124**.520, must contain a provision: (1) Setting forth the purpose of the joint venture; (2) Designating an 8(a) Participant as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for performance of the 8(a) contract; (3) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the 8(a) Participant(s); (4) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on an 8(a) contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well; (5) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each; (6) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract; (7) Obligating all parties to the joint venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member; (8) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request; (9) Requiring the final original records be retained by the managing venturer upon completion of the 8(a) contract performed by the joint venture; [[Page 325]] (10) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and (11) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract. (d) Performance of work. For any 8(a) contract, including those between mentors and protégés authorized by Sec. **124**.520, the joint venture must perform the applicable percentage of work required by Sec. **124**.510, and the 8(a) partner(s) to the joint venture must perform a significant portion of the contract. (e) Prior approval by SBA. SBA must approve a joint venture agreement prior to the award of an 8(a) contract on behalf of the joint venture. (f) Contract execution. Where SBA has approved a joint venture, the procuring activity will execute an 8(a) contract in the name of the joint venture entity. (g) Amendments to joint venture agreement. All amendments to the joint venture agreement must be approved by SBA. (h) Inspection of records. SBA may inspect the records of the joint venture without notice at any time deemed necessary. End Sec. **124**.513

Procedures for Processing Joint Ventures and Teaming Arrangements

25. What is a Joint Venture Agreement?

a. A Joint Venture Agreement (JVA) is an agreement between an eligible 8(a) Participant and one or more other business concerns to establish a new legal entity solely for the purpose of performing a specific 8(a) contract. The contract is then awarded to the Joint Venture entity rather than to one or more of the Participants.

26. When are Joint Ventures permitted?

a. Joint Ventures are permitted only when:

(1) The 8(a) Participant lacks the capacity to perform the contract on its own;

(2) The Joint Venture arrangement is fair and equitable;

(3) The Joint Venture will be of substantial benefit to the 8(a) Participant; and

(4) The 8(a) Participant brings substantial resources and/or expertise to the Joint Venture.

27. What does capacity mean?

a. "Capacity" means the overall ability of a business concern to meet the quality, quantity and time requirements of the contract. Generally, capacity is the firm's ability to provide adequate and appropriate management, labor, equipment, plant, bonding and financial resources to successfully complete the contract.

b. Some of the areas of capacity include:

(1) Adequate bonding (if necessary);

(2) Adequate financing;

(3) Technical expertise;

(4) Experience with similar requirements;

(5) Access to specialized/required equipment; and

(6) Access to appropriate facilities.

28. What role must the 8(a) Participant have in the Joint Venture?

a. An 8(a) Participant must be designated as the managing (or lead) Venturer, and an employee of the managing Venturer must serve as the project manager responsible for performance of the 8(a) contract.

29. How does SBA determine if the Joint Venture is small?

a. Except in the case of Joint Ventures under SBA's Mentor/Protégé program, for all sole source requirements and for competitive 8(a) procurements that are equal to or less than one half the size standard of the North American Industry Classification System (NAICS) code assigned to the requirement or are $10 million or less for employee-based size standards:

   (1) The 8(a) concern is considered to be affiliated for size purposes with the other concern(s); and

   (2) The combined annual receipts or number of employees of all concerns in the Joint Venture must not exceed the size standard for the NAICS code assigned to the 8(a) procurement.

b. For an 8(a) competitive procurement that exceeds half the size standard of the assigned revenue-based NAICS code, or $10 million for an employee-based NAICS code, a Joint Venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contact. See 13 CFR 124.513(b). See also 13 CFR 124.513(b)(3) and question 6 of this notice for special size rules for Joint Ventures between Mentors and Protégés under SBA's Mentor/Protégé program.

30. How does SBA determine if the Joint Venture is small under the Mentor Protégé Program?

a. A Joint Venture between a Protégé 8(a) firm and its approved Mentor will be deemed small provided that the Protégé is small under the size standard for the NAICS code assigned to the procurement and otherwise meets relevant eligibility requirements. See 13 CFR 124.513(b)(3). This means that under the Mentor/Protégé program, the size of the Mentor and the combined size of its approved Protégé may exceed the size standard applicable to the project for either sole source or competitive projects, as long as its Protégé is small under the size standard for the NAICS code assigned to the procurement.

31. What office must a Participant notify if it intends to enter into a Joint Venture Agreement and what information will be provided to the Participant?

a. An 8(a) Participant must notify and request approval from the servicing District Office for any contemplated agreements, arrangements or understandings, regardless of type, that may in any way give an interest to any person, other than those upon whom eligibility is based, in the operation, management or control of the 8(a) concern. This includes JVAs.

b. The District Office must provide the Participant and any other parties to the Agreement notice of all provisions required by SBA in the Joint Venture Agreement and all restrictions imposed by SBA on such agreements.

32. What are the general requirements for submitting and obtaining SBA approval of Joint Venture Agreements?

a. The Joint Venture applicants must submit all required information to the managing 8(a) Participant's servicing District Office as soon as possible, but no less than 20 working days prior to the scheduled date for contract award. Incomplete packages will be returned to the Participant without action. The managing Participant is the managing partner or lead Venturer.

b. The JVA must be approved by SBA prior to the award of an 8(a) contract to the Joint Venture.

c. Failure to obtain SBA approval of the JVA prior to award of the contract will result in SBA's request that the buying activity terminate the award to the Joint Venture.

d. SBA must approve in advance all proposed amendments, modifications, or extensions to a JVA.

33. What documentation must be submitted by the Joint Venture applicants to the District Office for approval of a Joint Venture?

a. The managing 8(a) Participant in the Joint Venture must submit the following information to its servicing District Office:

(1) The Joint Venture Agreement (the agreement must meet all the requirements set forth in 13 CFR 124.513(c) and Question 10 of this notice); and

(2) Three years of signed company year end financial statements and Federal tax returns for each participant.

b. A letter from the managing 8(a) Participant stating:

(1) What the 8(a) Participant or Participants lack in capacity and/or capability which makes the Joint Venture necessary for project performance;

(2) What specific benefits the 8(a) firm will receive from participation in the Joint Venture (in addition to contract revenue) and how these benefits will affect the 8(a) firm;

(3) What resources the 8(a) Participant(s) will bring to the Joint Venture; and

(4) The supplemental information listed in Question 11 of this notice.

34. What must be in the Joint Venture Agreement?

a. Every JVA to perform an 8(a) contract, including those between Mentors and Protégés, must contain a provision:

(1) Setting forth the purpose of the Joint Venture;

(2) Designating an 8(a) Participant as the managing Venturer of the Joint Venture, and an employee of the managing Venturer as the project manager responsible for performance of the 8(a) contract;

(3) Stating that not less than 51 percent of the net profits earned by the Joint Venture will be distributed to the 8(a) Participant(s);

(4) Providing for the establishment and administration of a special bank account in the name of the Joint Venture. This account must require the signature of all parties to the Joint Venture or designees for withdrawal purposes. All payments due the Joint Venture for performance on an 8(a) contract will be deposited in the special account, and all expenses incurred under the contract will be paid from the account;

(5) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the Joint Venture, with a detailed schedule of cost or value of each;

(6) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiations of the 8(a) contract;

(7) Obligating all parties to the Joint Venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member;

(8) Designating that accounting and other administrative records relating to the Joint Venture be kept in the office of the managing Venturer, unless approval to keep them elsewhere is granted by the District Director or his or her designee upon written request;

(9) Requiring that the final original records be retained by the managing Venturer upon completion of the 8(a) contract performed by the Joint Venture;

(10) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the Joint Venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the Joint Venture; and

(11) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA not later than 90 days after completion of the contract.

35. What supplemental information must be submitted by the Joint Venture applicants to the District Office?

a. Along with the JVA, the Joint Venture applicants must submit the following general identifying information:

(1) The name of the Joint Venture (the new entity);

(2) The EIN of the Joint Venture;

(3) The DUNS number of the Joint Venture;

(4) The names of the firms participating in the Joint Venture;

b. For each firm involved in the Joint Venture, submit:

(1) The primary industry of the firm;

(2) The current capabilities of the firm;

(3) A brief description of the history of the firm;

(4) SBA Form 355 (Application for Small Business Size Determination); and

(5) SBA Form 1623 (Certification Regarding Debarment, Suspension and other Responsibility Matters).

c. The Joint Venture applicants must submit a description of the project that includes:

(1) Customer Agency;

(2) Size and dollar value of project;

(3) Type of project (general construction, janitorial, etc.);

(4) Expected award date for the project;

(5) Duration of project and requirements for performance;

(6) Copy of the requirement’s offer and acceptance letters; and

(7) Draft or final copy of bid proposal or offer;

(8) An analysis (prepared by the Joint Venture participants) of the project that describes the anticipated cash flow, personnel, equipment and facility requirements;

(9) A copy of the Statement of Work; and

(10) The procurement's FedBizOpps synopsis.

d. For non-8(a) Participants, the Joint Venture applicants must submit:

(1) The number and value of contracts in the same NAICS code as that assigned to the procurement; and

(2) Relevant experience and professional licenses, etc.; and

(3) Details of all previous Joint Ventures with 8(a) firms, including the names of all participants in those JVA's.

e. Each 8(a) Joint Venture participant must indicate the effect the JVA and the contract award will have on their performance of existing contracts in terms of the following:

(1) Cash flow;

(2) Personnel;

(3) Equipment; and

(4) Facilities.

f. The Joint Venture applicants must outline the distribution of profits for the Joint Venture and must demonstrate that the combined 8(a) Participants will receive at least 51 % percent of the profits earned by the Joint Venture.

g. The Joint Venture applicants must demonstrate that the Joint Venture meets the relevant size requirements, and must analyze the percentages of work to be performed by each firm and each subcontractor. See 13 CFR 124.510, 124.513(d); 125.6.

h. The Joint Venture applicants must submit the following financial information and certifications:

(1) Documentation indicating the establishment and administration of a special bank account in the name of the Joint Venture. See Question 10;

(2) Amount and percentage of capital that each Venturer is contributing;

(3) Three years of signed company yearend financial statements and Federal tax returns for each Participant; and

(4) Where appropriate, evidence that the Joint Venture has sufficient bonding.

i. The Joint Venture applicants must submit the following employee information:

(1) A list of the employees needed to perform the project (by position, type and number in each category);

(2) The number and skills of employees supplied to the Joint Venture by each Venturer; and

(3) A brief description of the hiring and employee management responsibilities of each Venturer.

j. The Joint Venture applicants must submit the following concerning project management and administration:

(1) An explanation of how project management will be handled (the managing 8(a) Participant must maintain project management control);

(2) An explanation of the specific responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract; and

(3) A breakdown of work tasks to be performed by each Joint Venturer.

k. The Joint Venture applicants must also submit:

(1) A statement certifying that all the required provisions have been incorporated into the JVA, as set forth in 13 CFR 124.513(c);

(2) A statement certifying that the provisions of the JVA are fair and equitable and will substantially benefit the 8(a) Participant along with an explanation demonstrating this; and

(3) A statement certifying that the 8(a) Participant(s) will bring substantial value to the Joint Venture in terms of resources and expertise other than 8(a) status.

36. What is the SBA review process for a Joint Venture?

a. The Business Opportunity Specialist (BOS) in the District Office servicing the managing 8(a) Participant has the following responsibilities:

(1) Initial review of the entire package for completeness and of the JVA to ensure that all required provisions are included;

(2) Review of the participant firms to ensure compliance with size standard requirements;

(3) Review of the package to determine whether the Joint Venture is fair and whether it will substantially benefit the 8(a) Participants(s);

(4) Review of the package to determine whether the 8(a) Participant brings something of value to the Joint Venture in terms of resources and expertise other than its 8(a) status;

(5) Preparation of a summary report of findings;

(6) Submission of the summary report and relevant supporting documents to the District Counsel for review for legal sufficiency; and

(7) Submission of the report to the Assistant District Director for 8(a) BD (ADD/8(a) BD) for review and recommendation.

b. The District Counsel is responsible for reviewing the summary report, Joint Venture Agreement and supporting information for legal sufficiency.

c. The ADD/8(a)BD is responsible for reviewing the summary report, JVA and supporting documents, and makes a recommendation to the District Director.

d. The District Director or Deputy District Director is responsible for reviewing the summary report, JVA and supporting documents, and makes a final decision whether or not to approve the Joint Venture.

e. The District Office is responsible for notifying the participant and other interested parties of the decision to approve or deny the Joint Venture.

37. What items of analysis should the BOS include in the summary report?

a. In assessing the appropriateness of the Joint Venture, the BOS should consider factors including, but not limited to, the following:

(1) The purpose of the Joint Venture and specific benefits to be gained by the 8(a) firm;

(2) The size of the Joint Venture participants, and/or the Joint Venture;

(3) The finances of each participant, and financing of the Joint Venture, including cash flow;

(4) Affiliations of each participant;

(5) Percentage of disadvantaged ownership;

(6) Number of and skills of employees supplied to the Joint Venture by each Venturer;

(7) Type and value of equipment contributed by each Venturer;

(8) Number and value of contracts received by each participant in the NAICS code assigned to the requirement;

(9) Relevant expertise or professional licenses, etc. of each Venturer;

(10) The 8(a) Participant's compliance with business activity targets;

(11) Each participant's history of Joint Ventures;

(12) The breakdown of work or tasks to be performed by each Participant; and

(13) The impact of the Joint Venture requirement on performance of the 8(a) Participant's existing contracts in terms of cash flow, personnel, equipment, and facilities.

38. What must the District Office summary report address?

a. The District Office review should be based on consideration of the factors outlined in question 13 above, and the summary report must address the following issues at a minimum:

(1) The specific resources that the participant lacks which cause the Joint Venture to be necessary. See Question 3 of this notice pertaining to capacity. In determining whether the 8(a) Participant lacks sufficient capacity, the scope of prior contracts and past performance should be considered.

(2) Whether all required provisions specified in 13 CFR 124.513(c) have been incorporated into the JVA.

(3) Whether all the provisions of the Joint Venture are fair and equitable and for the substantial benefit of the Participant. In order to determine whether the firm will substantially benefit from the Joint Venture, the BOS may consider, among other things, dollars earned on the project, and the likelihood that as a result of the Joint Venture the firm will improve capabilities, increase experience, acquire new equipment, acquire additional employees, be capable of handling larger procurements, obtain expertise in a new area, or acquire new skills.

(4) The specific resources the 8(a) Participant brings to the Joint Venture. In determining whether the 8(a) Participant will bring substantial resources to the Joint Venture, the BOS should consider the equipment, personnel, expertise, bonding, financing, management capabilities, and facilities the 8(a) Participant will contribute. For managing Venturers, the BOS may also examine the expertise brought to the Joint Venture by the project manager. "Substantial" is not specifically defined, but is dependent on the nature of the procurement and the particular resources the 8(a) Participant brings. However, if the 8(a) Participant contributes far less than would warrant its receipt of 51 percent of the net profits of the Joint Venture, the presumption is created that the 8(a) Participant is not contributing substantial enough resources to the Joint Venture.

(5) Whether copies of 13 CFR 124.513 and this notice have been provided to the participants and discussed with the Participants.

39. Who in the SBA makes the final decision for Joint Venture Agreements when more than one District Office is involved?

a. Joint Venture Agreements involving program Participants having different servicing District Offices must be approved by the District Director of the servicing office of the managing 8(a) firm. Agreements will be forwarded from the ADD/8(a)BD of the District Office servicing the managing 8(a) firm (after comment) to the servicing offices of the secondary 8(a) Participant firms. Those offices will be allowed 3 working days to append comments and recommendations. The agreement package will then be returned to the managing Participant's servicing District Office for final decision by the District Director.

40. How much of the work under a requirement must the Joint Venture perform?

a. In order to be awarded an 8(a) contract, the Joint Venture must perform at least the following percentages of work:

(1) Services (non-construction). 50% of the cost of the contract incurred for personnel with its own employees;

(2) Supplies or Products. 50% of the cost of manufacturing the supplies or products (not including the cost of materials);

(3) General construction. 15% of the cost of the contract with its own employees (not including the cost of materials); and

(4) Special trade construction. 25 % of the cost of the contract with its own employees (not including the cost of materials). See 13 CFR 124.510, 13 CFR 125.6.

41. How much of the work of the Joint Venture must the 8(a) Participant(s) perform?

a. The 8(a) Participant(s) of the Joint Venture must perform a significant portion of the contract. Significance must be determined on a case-by-case basis, factoring considerations such as:

(1) The nature of the industry of the procurement;

(2) The level of resources dedicated by the Participant(s) (including man-hours, equipment, bonding, etc.); and

(3) The ultimate business development benefits that the Participant(s) will receive from their performance on the contract.

42. How does the SBA review Joint Ventures after approval?

a. The BOS for the managing participant will perform a review of financial information submitted quarterly and annually by the approved Joint Venture.

b. All Joint Ventures must be reviewed annually by the servicing District Office of the managing 8(a) Participant. This review takes place as part of the managing Participant's annual review. The review will commence with the Participant's first annual review after the Joint Venture has been in effect and will result in a report containing the following information:

(1) Whether the Joint Venture participants are complying with prime contractor performance requirements (See 13 CFR 125.6);

(2) Whether financial records are being recorded and kept as required;

(3) Whether the personnel of each Joint Venture participant are performing work as stipulated in the agreement and proposal;

(4) Whether equipment is used and accounted for as stipulated;

(5) Whether SBA has approved all amendments to the JVA; and

(6) Whether the 8(a) Participant(s) are receiving substantial benefit from the Joint Venture.

c. If there is more than one 8(a) Participant in the Joint Venture, the BOS for each non-managing Participant must examine the Joint Venture to determine whether the participant from that District Office is receiving substantial benefit from the Joint Venture and whether the Participant is contributing substantial resources to the Joint Venture. The reviews for non-managing Joint Venture participants also take place during such Participant's annual review.

d. SBA may inspect the records of the Joint Venture at any time, with or without notice.

e. A copy of the report described under item b, above, will be provided to the District Offices servicing the other Participants, if any.

43. What are the special considerations for contract award and execution?

a. Contract documents must list the name of the Joint Venture as the contractor. Signature approval of the contract is done with the following signatures unless awarded pursuant to a delegation of contract authority:

(1) SBA;

(2) Contracting Activity;

(3) Managing Venturer (8(a) firm); and

(4) All of the Joint Venture partners.

b. The client case number used in the SAC S/MEDCOR system will be the managing Participant's case number with added characters, in accordance with SACS/MEDCOR instructions. The BOS must immediately enter the Joint Venture's name, EIN and DUNS number, and the agency's prime contract number into all relevant databases.

44. Can the Joint Venture Agreement be amended?

a. The Joint Venture may be amended with advance approval from SBA. The members of the Joint Venture must submit the amendment(s) and justification(s) to the District Office servicing the managing participant for approval. The approval process is the same as for the original agreement (review and recommendation by BOS and ADD/8(a) BD, legal clearance from District Counsel, and the final decision by District Director).

45. What actions must be accomplished after project completion?

a. After project completion, a final close-out meeting should be held with the Joint Venture Participants to discuss the value of the Joint Venture with regard to increases in the firm's capacity and capability, whether the goals set forth at the inception of the Joint Venture were actually achieved and if not, why not; and any other concerns arising from the Joint Venture.

b. Immediately after project completion, the BOS must enter the Joint Venture's name, EIN and DUNS numbers, and the agency's prime contract number into all relevant databases.

46. What is a teaming arrangement?

a. A teaming arrangement may be an arrangement in which a potential prime contractor agrees with one or more companies to have them act as its subcontractors under a specified Government contract or acquisition program or it may be a JVA. See FAR 9.601 and 9.602, 48 CFR 9.601 and 9.602.

47. What is the role of teaming arrangements in the 8(a)BD Program?

a. A teaming arrangement may be a desirable business development tool. However, it may affect a Participant's eligibility if it results in circumstances of actual or negative control, affiliation, or loss of small business status. Consequently, a proposed teaming agreement must be carefully evaluated to determine the relationship of the parties.

48. How is a teaming arrangement treated in the 8(a)BD Program?

a. Joint Venture. Any teaming arrangement that creates a Joint Venture will be treated as a Joint Venture and will be subject to the requirements and limitations of all JVA’s.

b. Subcontract. Any teaming arrangement that creates a subcontractor relationship between the Participant and one or more other concerns will be administered by the contracting activity.

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CHAPTER 8: JOINT VENTURES AND TEAMING ARRANGEMENTS

What Is a Joint Venture Agreement?

For purposes of this SOP chapter, a Joint Venture Agreement (JVA) is an agreement between an eligible 8(a) participant and one or more other business concerns to establish a new legal entity solely for the purpose of performing a specific 8(a) contract. The contract is then awarded to the Joint Venture entity rather than to one or more of the participants.

When Are Joint Ventures Permitted?

Joint Ventures are permitted only when:

The 8(a) participant lacks the capacity to perform the contract on its own;

The Joint Venture arrangement is fair and equitable;

The Joint Venture will be of substantial benefit to the 8(a) participant; and

The 8(a) participant brings substantial resources and/or expertise to the Joint Venture.

What Does Capacity Mean?

"Capacity" means the overall ability of a business concern to meet the quality, quantity and time requirements of the contract. Generally, capacity is the firm's ability to provide adequate and appropriate management, labor, equipment, plant, bonding and financial resources to successfully complete the contract. (38 Comp. Gen. 864, affirmed Nov. 6, 1959; B149122, July 31, 1962; B149096, Aug. 9, 1962; B154734, Aug. 26, 1964.)

Some of the areas of capacity include:

Adequate bonding (if necessary);

Adequate financing;

Technical expertise;

Experience with similar requirements;

Access to specialized/required equipment; and

Access to appropriate facilities.

<u>What Role Must the 8(a) Participant Have in the Joint Venture?</u>

An 8(a) participant must be designated as the managing (or lead) venturer, and an employee of the managing venturer must serve as the project manager responsible for performance of the 8(a) contract.

<u>How Does SBA Determine if the Joint Venture Is Small?</u>

<u>Except in the case of Joint Ventures under SBA's Mentor/Protégé program, for all sole source requirements and for competitive 8(a) procurements that are equal to or less than one half the size standard of the North American Industry Classification System (NAICS) code assigned to the requirement or are $10 million or less for employee-based size standards:</u>

The 8(a) concern is considered to be affiliated for size purposes with the other concern(s); and

The combined annual receipts or number of employees of all concerns in the Joint Venture must not exceed the size standard for the NAICS code assigned to the 8(a) procurement.

<u>For an 8(a) competitive procurement that exceeds half the size standard of the assigned revenue-based NAICS code, or $10 million for an employee-based NAICS code, a Joint Venture of at least one 8(a) participant and one or more other business concerns may submit an offer as a small business so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contact. *See* 13 CFR 124.513(b). *See also* 13 CFR 124.513(b)(3)) and Question 6 of this chapter for special size rules for Joint Ventures between Mentors and Protégés under SBA's Mentor/Protégé program.</u>

<u>How Does SBA Determine if the Joint Venture is Small Under the Mentor/Protégé Program?</u>

A Joint Venture between a Protégé 8(a) firm and its approved Mentor will be deemed small provided that the Protégé is small under the size standard for the NAICS code assigned to the procurement and otherwise meets relevant eligibility requirements. *See* 13 CFR 124.513(b)(3). This means that under the Mentor/Protégé program, the combined size of the Mentor and its approved Protégé may exceed the size standard applicable to the project for either sole source or competitive projects, as long as the Protégé is small under the size standard for the NAICS code assigned to the procurement.

What Office Must a Participant Notify if it Intends to Enter into a Joint Venture Agreement and What Information Will be Provided to the Participant?

An 8(a) participant must notify and request approval from the servicing District Office for any contemplated agreements, arrangements or understandings, regardless of type, that may in any way give an interest to any person, other than those upon whom eligibility is based, in the operation, management or control of the 8(a) concern. This includes JVAs.

The District Office must provide the participant and any other parties to the Agreement notice of all provisions required by SBA in the JVA and all restrictions imposed by SBA on such agreements.

What Are the General Requirements for Submitting and Obtaining SBA Approval of Joint Venture Agreements?

The Joint Venture applicants must submit all required information to the managing 8(a) participant's servicing District Office as soon as possible, but no fewer than 20 working days prior to the scheduled date for contract award. Incomplete packages will be returned to the participant without action. The managing participant is the managing partner or lead venturer.

The JVA must be approved by SBA prior to the award of an 8(a) contract to the Joint Venture.

Failure to obtain SBA approval of the JVA prior to award of the contract will result in SBA's request that the buying activity terminate the award to the Joint Venture.

SBA must approve in advance all proposed amendments, modifications, or extensions to a JVA.

What Documentation Must be Submitted by the Joint Venture Applicants to the District Office for Approval of a Joint Venture?

The managing 8(a) participant in the Joint Venture must submit the following information to its servicing District Office:

The Joint Venture Agreement (the agreement must meet all the requirements set forth in 13 CFR 124.513(c) and the Question 10 of this chapter);

Three years of signed company year end financial statements and federal tax returns for each participant;

A letter from the managing 8(a) participant stating:

What the 8(a) participant or participants lack in capacity and/or capability which makes the Joint Venture necessary for project performance;

What specific benefits the 8(a) firm will receive from participation in the Joint Venture (in addition to contract revenue) and how these benefits will affect the 8(a) firm; and

What resources the 8(a) participant will bring to the Joint Venture; and

The supplemental information Question 11 of this chapter.

What Must Be in the Joint Venture Agreement?

Every JVA to perform an 8(a) contract, including those between Mentors and Protégés, must contain a provision:

Setting forth the purpose of the Joint Venture;

Designating an 8(a) participant as the managing venturer of the Joint Venture, and an employee of the managing venturer as the project manager responsible for performance of the 8(a) contract;

Stating that not less than 51 percent of the net profits earned by the Joint Venture will be distributed to the 8(a) participant;

Providing for the establishment and administration of a special bank account in the name of the Joint Venture. This account must require the signature of all parties to the Joint Venture or designees for withdrawal purposes. All payments due the Joint Venture for performance on an 8(a) contract will be deposited in the special account, and all expenses incurred under the contract will be paid from the account;

Itemizing all major equipment, facilities, and other resources to be furnished by each party to the Joint Venture, with a detailed schedule of cost or value of each;

Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiations of the 8(a) contract;

Obligating all parties to the Joint Venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member;

Designating that accounting and other administrative records relating to the Joint Venture be kept in the office of the managing venturer, unless approval to keep them elsewhere is granted by the District Director or his or her designee upon written request;

Requiring that the final original records be retained by the managing venturer upon completion of the 8(a) contract performed by the Joint Venture;

Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the Joint Venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the Joint Venture; and

Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA not later than 90 days after completion of the contract.

What Supplemental Information Must Be Submitted by the Joint Venture Applicants to the District Office?

Along with the JVA, the Joint Venture applicants must submit the following general identifying information:

The name of the Joint Venture (the new entity);

The EIN of the Joint Venture;

The business credit report (formerly the DUNS) number of the Joint Venture;

The names of the firms participating in the Joint Venture;

For each firm involved in the Joint Venture, submit:

The primary industry of the firm;

The current capabilities of the firm;

A brief description of the history of the firm;

SBA Form 355 (Application for Small Business Size Determination); and

SBA Form 1623 (Certification Regarding Debarment, Suspension and other Responsibility Matters).

The Joint Venture applicants must submit a description of the project that includes:

Customer agency;

Size and dollar value of project;

Type of project (general construction, janitorial, etc.);

Expected award date for the project;

Duration of project and requirements for performance;

Copy of the requirement's offer and acceptance letters;

Draft or final copy of bid proposal or offer;

An analysis (prepared by the Joint Venture participants) of the project that describes the anticipated cash flow, personnel, equipment and facility requirements;

A copy of the Statement of Work; and

The procurement's FedBizOpps synopsis.

<u>For non-8(a) participants, the Joint Venture applicants must submit:</u>

The number and value of contracts in the same NAICS code as that assigned to the procurement;

Relevant experience and professional licenses, etc.; and

Details of all previous Joint Ventures with 8(a) firms, including the names of all participants in those JVAs.

<u>Each 8(a) Joint Venture participant must indicate the effect the JVA and the contract award will have on their performance of existing contracts in terms of the following:</u>

Cash flow;

Personnel;

Equipment; and

Facilities.

<u>The Joint Venture applicants must outline the distribution of profits for the Joint Venture and must demonstrate that the combined 8(a) participants will receive at least 51 percent of the profits earned by the Joint Venture.</u>

<u>The Joint Venture applicants must demonstrate that the Joint Venture meets the relevant size requirements, and must analyze the percentages of work to be performed by each firm and each subcontractor. *See* 13 CFR 124.510, 124.513(d); 125.6.</u>

<u>The Joint Venture applicants must submit the following financial information and certifications:</u>

Documentation indicating the establishment and administration of a special bank account in the name of the Joint Venture. *See* Question 10;

Amount and percentage of capital that each venturer is contributing;

Three years of signed company year end financial statements and federal tax returns for each participant; and

Where appropriate, evidence that the Joint Venture has sufficient bonding.

<u>The Joint Venture applicants must submit the following employee information:</u>

A list of the employees needed to perform the project (by position, type and number in each category);

The number and skills of employees supplied to the Joint Venture by each venturer; and

A brief description of the hiring and employee management responsibilities of each venturer.

The Joint Venture applicants must submit the following concerning project management and administration:

An explanation of how project management will be handled (the managing 8(a) participant must maintain project management control);

An explanation of the specific responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract; and

A breakdown of work tasks to be performed by each joint venturer.

The Joint Venture applicants must also submit:

A statement certifying that all the required provisions have been incorporated into the JVA, as set forth in 13 CFR 124.513(c);

A statement certifying that the provisions of the JVA are fair and equitable and will substantially benefit the 8(a) participant along with an explanation demonstrating this; and

A statement certifying that the 8(a) participant will bring substantial value to the Joint Venture in terms of resources and expertise other than 8(a) status.

What is the Review Process for a Joint Venture?

The Business Opportunity Specialist (BOS) in the District Office servicing the managing 8(a) participant has the following responsibilities:

Initial review of the entire package for completeness and of the JVA to ensure that all required provisions are included;

Review of the participant firms to ensure compliance with size standard requirements;

Review of the package to determine whether the Joint Venture is fair and whether it will substantially benefit the 8(a) Participants(s);

Review of the package to determine whether the 8(a) participant brings something of value to the Joint Venture in terms of resources and expertise other than its 8(a) status;

Review of the package to ensure the non-managing venturer(s) provides the lacking necessary capacity the managing venturer

is missing. Given that the JVA will only be permitted where an 8(a) concern lacks the necessary capacity to perform a specific contract on its own, the BOS must review the package to ensure the non-managing venturer provides this missing capacity. The JVA must address this missing capacity, and the non-managing venturer(s) must provide it;

Preparation of a summary report of findings;

Submission of the summary report and relevant supporting documents to the District Counsel for review for legal sufficiency; and

Submission of the report to the Assistant District Director for 8(a) BD (ADD/8(a)BD) for review and recommendation.

The District Counsel is responsible for reviewing the summary report, Joint Venture Agreement and supporting information for legal sufficiency.

The ADD/8(a)BD is responsible for reviewing the summary report, JVA and supporting documents, and makes a recommendation to the District Director.

The District Director or Deputy District Director is responsible for reviewing the summary report, JVA and supporting documents, and makes a final decision whether or not to approve the Joint Venture.

The District Office is responsible for notifying the participant and other interested parties of the decision to approve or deny the Joint Venture.

What Analysis Should the BOS Include in the Summary Report?

In assessing the appropriateness of the Joint Venture, the BOS should consider factors including, but not limited to, the following:

Whether it fits into the business development needs identified in the firm's approved business plan. ;

The purpose of the Joint Venture and specific benefits to be gained by the 8(a) firm. The BOS will review the package to ensure the non-managing venturer(s) provides the lacking necessary capacity the managing venturer is missing. Given that the JVA will only be permitted where an 8(a) concern lacks the necessary capacity to perform a specific contract on its own, the BOS must review the package to ensure the non-managing venturer provides this missing capacity. The JVA must address this missing capacity, and the non-managing venturer(s) must provide it;

The size of the Joint Venture participants, and/or the Joint Venture;

The finances of each participant, and financing of the Joint Venture, including cash flow;

Affiliations of each participant;

Percentage of disadvantaged ownership;

Number of and skills of employees supplied to the Joint Venture by each venturer;

Type and value of equipment contributed by each venturer;

Number and value of contracts received by each participant in the NAICS code assigned to the requirement;

Relevant expertise or professional licenses, etc. of each venturer;

The 8(a) participant's compliance with business activity targets;

Each participant's history of Joint Ventures;

The breakdown of work or tasks to be performed by each participant; and

The impact of the Joint Venture requirement on performance of the 8(a) participant's existing contracts in terms of cash flow, personnel, equipment, and facilities.

What Must the District Office Summary Report Address?

The District Office review should be based on consideration of the factors outlined in the Question 13 above, and the summary report must address the following issues at a minimum:

The specific resources that the participant lacks which cause the Joint Venture to be necessary. *See* Question 3 of this chapter pertaining to capacity. In determining whether the 8(a) participant lacks sufficient capacity, the scope of prior contracts and past performance should be considered. The BOS's analysis will address the managing venturer's lacking resources. The analysis specifically addresses how the non-managing venturer(s) provides these lacking resources. Given that the JVA will only be permitted where an 8(a) concern lacks the necessary capacity to perform a specific contract on its own, the summary report addresses how the non-managing venturer(s) provides this missing capacity. The summary report must address this missing capacity and how the non-managing venturer(s) provides it.

Whether all required provisions specified in 13 CFR 124.513(c) have been incorporated into the JVA.

Whether all the provisions of the Joint Venture are fair and equitable and for the substantial benefit of the 8(a) participant. In order to determine whether the firm will substantially benefit from the Joint Venture, the BOS may consider, among other things, dollars earned on the project, and the likelihood that as a result of the Joint Venture the firm will improve capabilities, increase experience, acquire new equipment,

acquire additional employees, be capable of handling larger procurements, obtain expertise in a new area, or acquire new skills.

The specific resources the 8(a) participant brings to the Joint Venture. In determining whether the 8(a) participant will bring substantial resources to the Joint Venture, the BOS should consider the equipment, personnel, expertise, bonding, financing, management capabilities, and facilities the 8(a) participant will contribute. For managing venturers, the BOS may also examine the expertise brought to the Joint Venture by the project manager. "Substantial" is not specifically defined, but is dependent on the nature of the procurement and the particular resources the 8(a) participant brings. However, if the 8(a) participant contributes far less than would warrant its receipt of 51 percent of the net profits of the Joint Venture, the presumption is created that the 8(a) participant is not contributing substantial enough resources to the Joint Venture.

Who in SBA Makes the Final Decision for Joint Venture Agreements When More than One District Office is Involved?

Joint Venture Agreements involving program participants having different servicing District Offices must be approved by the District Director of the servicing office of the managing 8(a) firm. Agreements will be forwarded from the ADD/8(a)BD of the District Office servicing the managing 8(a) firm (after comment) to the servicing offices of the secondary 8(a) participant firms. Those offices will be allowed 3 working days to append comments and recommendations. The agreement package will then be returned to the managing participant's servicing District Office for final decision by the District Director.

How Much of the Work Under a Requirement Must the Joint Venture Perform?

In order to be awarded an 8(a) contract, the Joint Venture must perform at least the following percentages of work:

Services (non-construction). 50% of the cost of the contract incurred for personnel with its own employees;

Supplies or products. 50% of the cost of manufacturing the supplies or products (not including the cost of materials);

General construction. 15% of the cost of the contract with its own employees (not including the cost of materials); and

Special trade construction. 25 % of the cost of the contract with its own employees (not including the cost of materials). *See* 13 CFR 124.510, 13 CFR 125.6.

How Much of the Work of the Joint Venture Must the 8(a) Participant Perform?

The 8(a) participant (or the total of all 8(a) participants involved in the Joint Venture) must perform a significant portion of the contract. Significance must be determined on a case-by-case basis, factoring considerations such as:

The portion of the work to be performed by the 8(a) participant must be sufficient to support the a significant portion of the profits;

The nature of the industry of the procurement;

The level of resources dedicated by the participant or participants (including man-hours, equipment, bonding, etc.); and

The ultimate business development benefits that the participant(s) will receive from their performance on the contract.

How Does SBA Review Joint Ventures After Approval?

The BOS for the managing participant will perform a review of financial information submitted quarterly and annually by the approved Joint Venture.

All Joint Ventures must be reviewed annually by the servicing District Office of the managing 8(a) participant. This review takes place as part of the managing participant's annual review. The review will commence with the participant's first annual review after the Joint Venture has been in effect and will result in a report containing the following information:

Whether the Joint Venture participants are complying with prime contractor performance requirements (*see* 13 CFR 125.6);

Whether financial records are being recorded and kept as required;

Whether the personnel of each Joint Venture participant is performing work as stipulated in the agreement and proposal;

Whether equipment is used and accounted for as stipulated;

Whether SBA has approved all amendments to the JVA; and

Whether the 8(a) participant(s) are receiving substantial benefit from the Joint Venture.

If there is more than one 8(a) participant in the Joint Venture, the BOS for each non-managing participant must examine the Joint Venture to determine whether the participant from that District Office is receiving substantial benefit from the Joint Venture and whether the participant is contributing substantial resources to the Joint Venture. The reviews for non-managing Joint Venture participants also take place during such participant's annual review.

SBA may inspect the records of the Joint Venture at any time, with or without notice.

A copy of the report described under item b., above, will be provided to the District Offices servicing the other participants, if any.

Are there Special Considerations for Contract Award and Execution?

Contract documents must list the name of the Joint Venture as the contractor. Signature approval of the contract is done with the following signatures unless awarded pursuant to a delegation of contract authority:

SBA;

Contracting activity;

Managing venturer (8(a) firm); and

All of the Joint Venture partners.

The client case number used in the SACS/MEDCOR system will be the managing participant's case number with added characters, in accordance with SACS/MEDCOR instructions. The BOS must immediately enter the Joint Venture's name, EIN and DUNS number, and the Agency's prime contract number into all relevant databases.

Can the Joint Venture Agreement be Amended?

The Joint Venture may be amended with advance approval from SBA. The members of the Joint Venture must submit the amendment(s) and justification(s) to the District Office servicing the managing participant for approval. The approval process is the same as for the original agreement (review and recommendation by BOS and ADD/8(a)BD, legal clearance from District Counsel, and the final decision by District Director).

What Actions Must be Accomplished After Contract Completion?

After contract completion, a final close-out meeting should be held with the Joint Venture participants to discuss the value of the Joint Venture with regard to increases in the firm's capacity and capability, whether the goals set forth at the inception of the Joint Venture were actually achieved and if not, why not, and any other concerns arising from the Joint Venture.

What is a Contractor Team Arrangement?

A teaming arrangement may be an arrangement in which a potential prime contractor agrees with one or more companies to have them act as its subcontractors under a specified Government contract or acquisition program or it may be a JVA. The requirements under the limitation of subcontracting must be maintained. *See* FAR §§ 9.601 9.602, and 52.219-14, 48 CFR 9.601, 9.602 and 52.219-14. To maximize the number and type of procurement opportunities, 8(a) firms are allowed and encouraged to team with both 8(a) and non-8(a) firms. However, the SBA is not normally involved with these arrangements, and the SBA is not required to review or approve them.

What is the Role of Teaming Arrangements in the 8(a) BD Program?

A teaming arrangement may be a desirable business development tool. However, it may affect a participant's eligibility if it results in circumstances of actual or negative control, affiliation, or loss of small business status. Consequently, a proposed teaming agreement must be carefully evaluated to determine the relationship of the parties.